WP(C) 7414/2005
BEFORE
HON'BLE JUSTICE B P KATAKEY
The petitioner by the present writ petition has challenged the order dated 11.08 .2005, passed by the Principal and Secretary, Rangapara College, removing him fr om service as Senior Lecturer, department of Assamese, Rangapara College, with e ffect from the date of issuance of such order, pursuant to communication dated 2 1.07. 2005 issued by the Director of Higher Education, Assam.

2. The case of the petitioner is that while was working as Principa l-in-Charge and Secretary of Rangapara College, Rangapara, he was served with a show cause notice dated 29.01.2002 issued under Rule 9 of the Assam Discipline a nd Appeal Rules, 1964 (in short, the 1964 Rules) leveling as many as 12 allega tions. The petitioner on receipt of the same, filed an application dated 09.02.2 002 requesting the disciplinary authority to allow him to inspect the documents. The petitioner was thereafter served with statement of allegations as well as t he list of documents and list of witnesses on 17.09.2002. The petitioner again o n 02.08.2002 requested the Governing Body of the College to allow him to inspect all relevant documents mentioned in the said communication. Having not received any reply to such request, filed another application on 07.09.2003 before the a uthority requesting to allow him to inspect the documents. Another show cause no tice was issued on 02.04.2005 under Rule 9 of the 1964 Rules read with Article 3 11 of the Constitution of India by the enquiry officer, asking the petitioner to show cause as to why any of the penalties prescribed in Rule 7 of the said Rule s should not be inflicted on him on the allegations contained therein. The petit ioner by the said show cause notice was given 10 days time to submit his reply, further informing him that if he intends to inspect the document, he may ask for it in writing within 7 days. The petitioner accordingly on 13.04.05 filed an ap plication for inspection of documents. According to the petitioner, though such inspection was not allowed, he filed his show-cause dated 28.04.2005 denying the allegations leveled against him. It is the further case of the petitioner that the disciplinary authority, without holding any enquiry, passed an order dated 1 1.08.2005 removing him from service with effect from the date, which has been ch allenged in the present writ petition.

3. I have heard Mr. N. Dutta, learned senior counsel for the petiti oner, Mr. R.P. Sarma, learned senior counsel for the respondent Nos. 4 and 5 as well as Mr. M. Dutta, learned standing counsel for the Education Department appe aring on behalf of respondent Nos. 2 and 3. None appears on behalf of respondent Nos. 1 and 6.

4. Mr. Dutta, learned senior counsel for the petitioner referring to the st atements made in paras 19 and 20 of the writ petition has submitted that after i ssuance of the show-cause notice dated 02.04.2005 asking the petitioner to show cause as to why the disciplinary action shall not be taken against him as mentio ned in the said letter, the petitioner though submitted his reply on 28.04.2005, even though he was not allowed to inspect the documents, denying the charges le velled against him, the authority without conducting any departmental enquiry, i nflicted the punishment vide order dated 11.08.2005 removing him from service, i n complete violation of the provisions of the 1964 Rules, which requires holding of the regular departmental enquiry, in the event the charges levelled against a delinquent is denied by him. According to the learned senior counsel since the allegations levelled against the petitioner have been denied, the authority can not remove the petitioner from service without holding regular enquiry as has be en done in the instant case.

5. Mr. Sharma, the learned senior counsel appearing on behalf of th e College Management, however, has submitted that it is not that no enquiry was conducted by the authority before imposing penalty of removal from service vide order dated 11.08.2005. It has been submitted that the authority having not sati

sfied with the explanation given by the petitioner, appointed the Enquiry Office r who conducted enquiry and submitted his report on 30.04.2005 and thereafter th e authority having decided to impose penalty of removal has passed order dated 1 1.08.2005. Mr. Sharma, in support of his contention has placed before the Court a copy of the enquiry report dated 30.04.2005.

6. Though the writ petition is pending since 2005, no affidavit-in-opposition has been filed by any of the respondents. No record has been produce d. The learned senior counsel appearing for the College management, however, as noticed above, has produced a copy of the enquiry report dated 30.04.2005 to substantiate his contention that a regular disciplinary enquiry was conducted ag ainst the petitioner and on the basis of the findings recorded by the Enquiry Of ficer, the order of punishment of removal from service was passed.

7. The petitioner in paragraphs 19 and 20 of the writ petition stat ed on oath that after submission of the show cause reply dated 28.04.2005, no en quiry at all was held against him with notice to him. The respondent authorities have not denied the said specific averment made in the writ petition by filing any affidavit. The college management by producing a copy of the enquiry report dated 30.04.2005 is sought to project that after submission of the show cause reply, an enquiry was conducted by Sri R.N. Bhuyan, who was appointed as Enquiry Officer, who in his report has recorded the finding that the charges levelled a gainst the petitioner have been proved and accordingly the order of punishment w as passed.

8. Though the disciplinary authority has initially issued the show cause no tice on 29.01.2002 and served the petitioner with the statements of allegations, list of witnesses and list of documents on 17.09.2002, it is evident from Annex ure 20 to the writ petition that the Enquiry Officer, without conducting enquiry on the basis of the show cause notice issued by the disciplinary authority, iss ued another show cause notice dated 02.04.2005 purportedly under Rule 9 of 1964 Rules read with Article 311 of the Constitution of India, asking the petitioner to show cause as to why any of the penalties prescribed in Rule 7 of 1964 Rules should not be inflicted on him, on the basis of the allegations levelled therein , giving him 10 days time to submit his reply and further informing him about hi s right to inspect relevant documents. Such a course of action adopted by the En quiry Officer is unheard of. The Enquiry Officer, on being appointed by the disc iplinary authority, is to conduct the enquiry against a delinquent officer, on t he basis of the charge sheet issued by the disciplinary authority. The enquiry o fficer has no power and authority to issue any charge sheet and conduct enquiry thereafter, as has been done in the instant case. It appears from the enquiry re port dated 30.04.05, a copy of which has been produced by the learned senior cou nsel for the college authority, that the Enquiry Officer conducted the enquiry o n the basis of the charge sheet issued by him, that too within 2 (two) days of i ssuing the same. It also appears from the pleadings in the writ petition that th ough the petitioner requested the disciplinary authority as well as the Enquiry Officer, to allow him to inspect the relevant documents, the same was not allowe d. Such a statements of fact on oath has to be accepted in the absence of any af fidavit from the college authority. The authority has also not produced the rele vant records to show that relevant documents were allowed to be inspected by the petitioner. Denial of right to inspect the relevant documents renders the disci plinary proceeding bad in law as the petitioner has been denied reasonable oppor tunity to defend himself.

9. That being the position, I am of the view that no proper enquiry was conducted by the authority before passing the order of punishment-dated 11. 08.2005. Hence, the order of removal dated 11.08.2005 is set aside. The petition er shall be taken back in service as Senior Lecturer, Assamese department forthw ith. He shall be entitled to 70% of his back wages from the date of his removal

till date. It is, however, open to the authority to initiate disciplinary proceeding against the petitioner by issuing fresh show cause notice.

10. The writ petition is accordingly allowed to the extent indicated above. No cost.